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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Scott C. Harris	) Group Art Unit 3624
			)
App. No.	:	09/780,248	) CERTIFICATE OF FAX TRANSMISSION
			)
Filed	:	February 9, 2001	) I hereby certify that this correspondence and all marked attachments are being facsimile transmitted to the Patent and Trademark Office on the date shown below:
For	:	REAL TIME AUCTION WITH END GAME	)
			) 2/21/06
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Examiner	:	C. R. Kyle	) /SCH/
			) Scott Harris
			)

APPEAL BRIEF UNDER 37 CFR 41.37

United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant herewith files this appeal brief under rule 41.37. The sections required follow.

Please charge the Appeal Brief fee, and one month extension of time (both small entity), to deposit account number 50-1387.

Real Party in Interest

The inventor, Scott C. Harris, is the real party in interest.

Related Appeals And Interferences

There are no known related appeals or interferences.

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Status of Claims

Claims 1-7, 9-11 and 15-33 are currently pending in the case. Claims 1-4 are withdrawn from consideration. The remaining claims 8 and 12-14 were canceled during prosecution. Each of the rejected claims 5-7, 9-11 and 15-33 are appealed.

Status of Amendments

No amendment has been filed after final rejection.

Summary of Claimed Subject Matter

Claim 5 defines accepting bids from a plurality of users for a specific item being auctioned over a network. This is shown in the basic system of Figure 1, where the server 100 can allow literally any computer on the Internet to place a bid. See generally page 4 lines 11-17. Claim 5 also requires defining rules for actions in the auction. Page 8 line 22 describes these rules. Page 7 lines 21-23 define that the rules can include times see also page 8 lines 2-6 and 16-23.

Claim 5 also defines keeping the rules secret until the defined time, see page 9 lines 19-24.

Claim 9 defines sending information for an auction from a server to a local computer, see page 4 lines 11-17. The information includes a bid amount which will be necessary for the user to be the highest bidder. The winning bid amount is described for example page 16 line 11. Claim 9 further defines making a decision at the local computer to accept or reject a new bid. This is described page 16 lines 4-13. Claim 9 defines that, only if the new bid is accepted, information about it is sent to the server. See page 16 lines 12-15. The accepting of the bid is determined locally, see generally page 16 lines 4-19.

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Claim 15 defines displaying an item for sale for auction see generally page 5 lines 1-10 or page 4 lines 24-25. Page 15 further defines displaying information that allows the user to enter either a bid or an amount to automatically win. The bids are described page 15 lines 9-15, and also in the quick winning bid at the bottom of page 19. Page 19 lines 23 through page 20 line 1, also allows posting a quick winning bid, see page 20 line 22.

Claim 20 defines displaying an item for sale over the Internet, see generally page 4 lines 20-25. Claim 20 further defines displaying information associated with the bid for the item in an "screen tip" see generally page 20 lines 6-7.

Claim 23 defines an auction which sends information to a plurality of local computers that allows an action see generally page 4 lines 11-17. The information is displayed on the local computers, see page 4 lines 15-17. The display is automatically updated with new information. See page 12 lines 6-11.

Claim 28 defines conducting an auction over a network by accepting bids for items, see generally page 4 lines 11-17. A highest bid is taken as being the winning bid. See page 16 lines 1-19. The bid that is received within a predetermined period of time before the end of the auction is treated less favorably than bids received prior to that predetermined period. See page 23 lines 4 through page 24.

Claim 32 defines conducting an auction over a network but accepting bids and establishing the highest bid as being the winning bid, see page 14 lines 11-17 and page 16 lines 1-19. Identities of the bidders during that conducting is determined see page 23 lines 7-10 and a bid from bidders whose identities have not been determined and are received within a predetermined period are treated less favorably see page 23 line 19 through page 24 line 8.

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Grounds of rejection to be reviewed on appeal

The current rejections, and hence the grounds of rejection to be reviewed on appeal are:

Are Claims 15-19 and 29 properly rejected as being indefinite?

Are claims 5-8 and 15-17 and 28-32 properly rejected as not being statutory.

Are claims 15, 16 and 19 properly rejected over Barzilai.

Is claim 28 properly rejected based on Holden.

Are claims 5-8 properly rejected over Shoham in view of eBay help.

Are claims 9-11 properly rejected over Shoham in view of Harrington.

Are claims 12-14, 23-24 and 27 properly rejected over Barzilai in view of auction this!

Are claims 25-26 properly rejected over Barzilai in view of auction this in view of Dinwoodie.

Is claim 17 properly rejected over Barzilai in view of Lander.

Is claim 18 properly rejected over Barzilai in view of Scaer.

Is claim 20 properly rejected over Shoham in view of Scaer.

Are claims 21-22 properly rejected over Shoham in view of Barzilai in view of Scaer.

Is claim 29 properly rejected over Holden.

Are claims 30 and 32 properly rejected over Holden in view of Alaia.

Finally, are claims 14 and others properly rejected as based on obviousness-type double patenting.

Is the restriction proper, since there is a link in claim that links the two groups.

Argument

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Rejections Under Section 112.

Claim 15:

The obvious typographical error, with an extra word "entering" will be corrected at such time as the other issues in the case are obviated.

The other objection is to the phrase "displaying information which allows... a user to enter". In a method claim, it is certainly proper to recite that information is displayed that allows a user to enter other information. It is true that this claim does not positively recite entering the information. The current claim scope is intentional.

Claim 29:

Again, since this is a method claim, no positive recitation of the information being selected is necessary or desirable.

If previous comments indicated that this was changed, then applicant apologizes for the unintentional misstatement.

Rejections Under Section 101

Claims 5-8, 15-17 and 28-32 are rejected under 35 U.S.C. 101 as allegedly being directed to non-statutory subject matter. This is based on a so-called "technological arts" rejection. The "technological arts" rejection has been overruled by ex parte Lundgren. Hence, the rejection is respectfully traversed.

Reconsideration of the Restriction

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The restriction is noted. Reconsideration of the grouping is requested, since the viewing of the auction item from multiple different perspectives is also defined by elected claim 17. This subject matter hence links the elected group with the non elected group.

Rejections Under Section 102 and 103

Claims 15, 16 and 19 stand rejected under 35 U.S.C. 102 as allegedly being anticipated by Barzilai. Claim 15 requires an item for sale over a network, and that the information allows entering either a bid for the item or an amount that automatically wins the auction. The rejection alleges that this is met by Barzilai's entry of a bid. Note, however, the claim 15 displays information that allows the user to enter either the bid or the amount of automatically wins the auction. Barzilai does not display information that allows "either a bid or an amount that automatically wins..." to be entered. The displayed information is being claimed -- not the alternative entry. Barzilai does not disclose information that allows entering either bid or amount, and claims 15, 16 and 19 should therefore be allowable thereover.

Claim 28 stands rejected as being anticipated by Holden. Claim 28 requires that a bid received towards the end of an auction is treated "less favorably" than a bid received prior to that predetermined period. This is not disclosed by Holden – Holden treats all bids with the same amount of favoribility. The rejection refers to the auto extend feature in paragraph 83 of Holden. This automatically extends the auction to avoid snipers. However, all auction bids are treated the same way. Holden does not treat some bids different than others. Therefore, Holden teaches nothing about treating a bid received within that predetermined time "less favorably" than bids received prior to that time. The remarks of the rejection state that late arriving bids cause an auction extension and hence are treated

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differently and less favorably. However, this appears is incorrect. The bids are treated the

same in Holden. The only difference is that the auction is extended. This does not in any

way treat the bids less favorably. The bids are treated precisely the same way during the

auction extension that they are before the auction extension. Claim 28 is hence also

allowable for these reasons.

Claims 5-8 stand rejected under 35 USC 103 based on Shoham in view of "formats".

The rejection admits that Shoham does not teach keeping the rules secret. Formats,

however, simply teaches that a <u>reserve price</u> is kept secret during the auction. This

teaches nothing about keeping <u>bidding rules</u> secret, as claimed. In fact, the reserve price

which is mentioned in "formats", is set by the person who makes the auction. It has nothing

to do with the bidding rule – it is part of the auction formation, not part of the bidding

formation. Therefore, this secondary reference is entirely inapplicable. Even if combined, it

would only provide a Shoham type system, with a secret reserve prices from "formats". The

remarks of the rejection state that the reserve price is a bidding rule and "the two are

therefore equivalent". However, this statement ignores the words of the claims, which

require that the rules include "at least a time when the action will take place and an actual

action that will take place of the defined time". A reserve price is certainly not this kind of

rule. The rejection therefore ignores the specific claim words.

Claims 9-11 stand rejected over Shoham in view of Harrington. Claim 9 requires

that information is maintained about a bid amount which will be necessary for the new user

to be the highest bidder. The rejection is based on "official notice"; but this official notice is

believed inapplicable to the present claim. The official notice is based on what is done by

an auctioneer in a live auction. Claim 9, on the other hand, is very different than a live

auction; in fact, claim 9 describes saving this information at the local computer, and

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sending the information to the server computer only when the local bid is higher than the highest bid information. This says nothing about accepting bids at the local computer, even when they are hosted at the remote computer. With all due respect, how an auctioneer in a live auction acts is quite unrelated to this specific interaction between local computer and server computer, as claimed.

More specifically, claim 9 defines that the information on the local computer includes the information about a bid amount which will be necessary for the user of the local computer to be a highest bidder. While Shoham does teach the basic aspects of certain Internet auction techniques, it teaches nothing about the bid amount necessary for the user to be the highest bidder being stored on the local computer and that the accepting a bid sends the information to the server only when the local bid is higher than that highest bid. The rejection paraphrases this as "offloading" and alleges that this is shown in Harrington's summary of the invention column 5 lines 20-42. However, that cited section simply states that the server makes available selected bid information such as bidder status (that is leader or not leader) , or the highest bid. While Harrington states that this is broadcasted and made available, it teaches nothing about storing this on the local computer as claimed. Harrington certainly teaches nothing about the specific claim limitation of claim 9 that requires that the comparison be done on the local computer. The notion that this could be done is based on the teaching of the present specification, and hence is based on hindsight. Harrington certainly does not teach anything more than making this information available, and certainly does not teach the specific limitations of claim 9.

Claim 11 specifies updating a plurality of computers with new information. The rejection alleges that this is shown by Shoham. However, information is defined by the claim as being "a bid amount which will be necessary for the computer at the local

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computer to be a highest bidder". Shoham certainly does not teach or suggest this specific updating, as has been admitted by the patent office.

Claims 12-14, 23-24 and 27 stand rejected over Barzilai in view of the "auction this" reference. Claims 12 through 14 were canceled in the previous amendment, and hence these claims are not appealed.

Claim 23 requires automatically updating a display, which is not taught or suggested by Barzilai. Claim 24 requires that this is done via automatically refreshing a Web browser. The rejection simply notes that Barzilai HAS a Web browser, but teaches nothing and alleges nothing about automatically refreshing it. In fact, this automatic updating of a web browser is not taught by Barzilai or Barzilai in view of Auction This. In the remarks, the Patent Office states that it is well-known to refresh a Web browser, and page 12 of the official action states that this can be done with the re load button in Netscape Navigator. However, with all due respect, this ignores the claim limitations which require <u>automatically</u> updating the display. A manual press of the refresh button could hardly be considered to be the same as the claimed automatic update. This rejection impermissibly attempts to ignore claim limitations.

Claim 25-26 stand rejected over Barzilai in view of "Auction this" and further in view of Dinwoodie. The rejection alleges that Dinwoodie teaches the use of video to form parts of the auction column 6 lines 19-29. However, Barzilai in view of Auction this and in view of Dinwoodie does not teach using streaming video (claim 25) or stop motion video (claim 26) to form parts of the view, as claimed, and certainly not to form an automatic update of the screen which is seen by the user.

Claim 17 stands rejected over Barzilai in view of Lander. The rejection admits that Barzilai does not teach a three-dimensional view, and alleges that this is shown in Lander.

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Column 4 lines 36-47 explain that there may be three-dimensional views of furniture components. This teaches nothing about a 3 dimensional view of items in an auction setting, as claimed.

Claim 18 stands rejected over Barzilai in view of Scaer. The rejection admits that Barzilai does not screw shows screen tips. Scaer shows screen tips, but does not use those screen tips to show bid amounts. Scaer merely states in his summary of the invention that network objects are graphically displayed as icons without alphanumeric labels. These objects are selected by hovering the cursor proximate to the selected object. However, this is done in the context of a computer managed communication network with user interactive access. In other words, Scaer discloses screen tips, but teaches nothing about the screen tip showing bid amounts. Merely showing a reference that displays screen tips does not suggest the subject matter of claim 18 which requires that the screen tips SHOW BID AMOUNTS. Again, the rejection ignores these claim limitations.

Claim 20 should be allowable for similar reasons. Merely showing a reference that shows screen tips does not suggest the subject matter of claim 20, in which the screen tips SHOW BID AMOUNTS.

Claims 21-22 are rejected over Shoham in view of Barzilai and Scaer. As described above, the mere provision of a reference showing screen tips does not suggest screen tips viewing being used for bids, as claimed.

Claim 29 stands rejected under 35 U.S.C. 103 as being obvious over Holden. This claim should be allowable for reasons discussed above with respect to claim 28, as well as on its own merits. Nothing in Holden teaches anything about modifying the "selected time", and this modification is completely unobvious based on Holden's teaching. There is simply

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no suggestion of this. The mere statement that this is obvious does nothing to meet the

Patent Office's burden of providing a prima facie showing of unpatentability.

Claims 30 and 32 are rejected over Holden in view of Alaia. The rejection states that

Holden teaches identifying users near the end of an auction. All that Figure 8 shows,

however, is keeping track of bidders, and when they placed their bid, as a bid history.

There is no teaching or suggestion of treating the later bids less favorably, see above. In

fact, this contention is based entirely on hindsight, and not on the teaching of the prior art.

Merely extending the auction does not treat them less favorably.

Alaia teaches in column 14 that a bid within a specified interval triggers an overtime,

making it similar to the reference discussed above. Nowhere is there any teaching or

suggestion of treating that bidder less favorably, rather the auction is extended to prevent

the 'sniping". Therefore, claims 30 and 32 are completely patentable over the cited prior art.

Certain claims stand rejected based on provisional obviousness type double

patenting based on 09/669805. However, the claims in this case are entirely different than

the claims in the previous case. While admittedly, certain claims have in common certain

features, such as automatic updating and rules, there is no teaching or suggestion of the

specifically claimed subject matter in the prior '805 application. Hence, this contention is

traversed.

Please charge any fees due in connection with this Brief to Deposit Account No. 50-

1387.

<div align="center">Respectfully submitted,</div>

Dated: 2/21/06_____   By: /SCH/
                                        Registration No. 32,030
                                        Attorney of Record
<div align="center">-11-</div>

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Claims appendix

(Claims involved in the appeal. Claims 1-4 are included, since the restriction is being traversed).

    1.   (withdrawn) A method of conducting an auction over a network, comprising:

displaying an item which will be the subject of an auction, said displaying comprising providing a view of the item over the network, which allows the item to be viewed from at least multiple different perspectives; and

accepting bids for purchase of the item over the network.

    2.   (withdrawn) A method as in claim 1, wherein said providing a view comprises allowing the item to be viewed three-dimensionally.

    3.   (withdrawn) A method as in claim 1, wherein said providing a view comprises first providing a first resolution view of the item, and loading views from said at least multiple perspectives while the first resolution view of the item is being displayed.

    4.   (withdrawn) A method as in claim 3, wherein said multiple perspectives include a three-dimensional view of the object.

    5.   A method, comprising:

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allowing each of accepting bids from a plurality of users to submit bids for a specified item being auctioned, said bids being submitted from any of a number of clients over a network to a server which collects said bids; and

defining rules for actions in said auction, said rules including at least a time when the action will take place, and an actual action that will take place at the defined time; and

keeping the rules secret until the defined time.

6.   A method as in claim 5, wherein said actions are bids to take place at the defined time.

7.   A method as in claim 5, wherein said actions are allowing override of a previous bid.

9.   A method of conducting an auction over a network, comprising:

for any particular auction, sending information from a server computer to a local computer, which information enables the local computer to carry out some function associated with bidding on an item, wherein said information includes information about a bid amount which will be necessary for the user at the local computer to be a highest bidder;

making a decision at the local computer to accept or reject a new bid from a user at the local computer; and

only if the new bid is accepted at said local computer, sending information about the new bid to the server computer,

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wherein said accepting a bid comprises comparing a local bid to said highest bid information, and sending said information to said server computer only when said local bid is higher than said highest bid information.

10.   A method as in claim 9, wherein said information includes information about a bid amount which will be necessary for the user at the local computer to be a highest bidder, and wherein said accepting a bid comprises comparing a local bid to said highest bid information, and sending said information to said server computer only when said local bid is higher than said highest bid information.

11.   A method as in claim 9, further comprising automatically updating each of a plurality of computers with new information.

15.   A method, comprising:

displaying an item for sale by auction over a network; and

allowing displaying information which allows entering a user to enter either one of a bid for said item, or an amount that automatically wins the auction.

16.   A method as in claim 15, further comprising automatically updating at least parts of the display seen by a plurality of users indicative of the item for sale.

17.   A method as in claim 15, wherein said displaying an item for sale comprises displaying a three-dimensional view of the item for sale.

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18.   A method as in claim 15, further comprising displaying a screen tip indicating bid

amounts.

19.   A method as in claim 15, wherein said network is the Internet.

20.   A method, comprising:

displaying an item for sale over the Internet, by causing said item to be displayed on

each of a plurality of client computers associated with the Internet, based on commands

from a server computer; and

displaying information associated with the bid for the item in a screen tip associated

with the item when a cursor is placed over the item on one of the client computers.

21.   A method as in claim 20, wherein said information associated with the bid for the

item is a current bid amount.

22.   A method as in claim 20, wherein said information associated with the bid for the

item is a bid amount, and

further comprising allowing the user to accept a bid amount associated with a screen

tip.

23.   A method of conducting an auction over a network, comprising:

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for any particular auction of an item, sending information to a plurality of local

computers which enables the local computers to carry out some function associated with

bidding on the item;

displaying said information on said local computers;

automatically updating said displaying on each of said plurality of computers with

new information.

24.   A method as in claim 23, wherein said automatically updating comprises

automatically refreshing a Web browser running on computers associated with said at least

some of said plurality of users.

25.   A method as in claim 23, wherein said automatically updating comprising using

streaming video to form certain parts of said view.

26.   A method as in claim 23, wherein said automatically updating comprises using stop

motion video to form certain parts of said view.

27.   A method as in claim 23, further comprising determining an action representing a

change in an auction condition, and wherein said automatically updating is responsive to

said determining.

28.   A method comprising:

conducting an auction over a network by accepting bids for items, and establishing a

highest bid for an item as being a winning bid; and

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treating a bid received within a predetermined period of time before an end time of an

auction less favorably than bids received prior to said predetermined period.

29.   A method as in claim 28, further comprising displaying information allowing a seller

to select an amount of time defining said predetermined period.

30.   A method as in claim 28, further comprising determining a bid received within said

predetermined period of time that was placed by a bidder who has previously participated in

other bids prior to said predetermined period of time, and not treating said bid by said bidder

less favorably.

31.   A method as in claim 29, wherein said conducting comprises accepting bids in a

first way which keeps bids at a lower level less than a maximum bid but high enough to win

a specified auction, and said treating comprises accepting bids at a maximum amount

without keeping them at said lower level.

32.   A method comprising:

conducting an auction over a network by accepting bids for items, and establishing a

highest bid for an item as being a winning bid;

determining identities of bidders bidding during said conducting; and

treating a bid from bidders whose identities have not been determined by said

determining, and which bids are received within a predetermined period of time before an

end time of an auction, less favorably than bids received prior to said predetermined period.

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      33.   (Original)   A method as in claim 19, wherein said information associated

with the bid for the item is a current bid amount.

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Evidence appendix

(none)

Related Proceedings Appendix

(none)

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